BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of Framework for Broadband Internet Service	GN Docket No. 10-127

COMMENTS OF BRIGHT HOUSE NETWORKS, LLC

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EXECUTIVE SUMMARY

Bright House Networks, LLC ("Bright House") provides high-quality advanced digital video services, facilities-based broadband Internet access and voice services, and high-capacity business-class voice, data, and Internet services in five different states. We face competition from other facilities-based providers in all of our markets, including competition from wireline and fixed and mobile wireless providers.

Our experience, and that of the industry over many years, shows that there is no need to impose additional regulations on broadband services, whether by means of "reclassification" or otherwise. Competition from other providers, along with burgeoning consumer demand for new, higher-capacity, higher-quality offerings drives providers to continuously improve their services and act in ways that benefit consumers. For example, Bright House is undertaking a substantial upgrade of its network to DOCSIS 3.0 in an effort to remain competitive and expand its business. This substantial investment is the product of market forces and meeting consumer needs, not regulation.

In fact, imposing a new regulatory regime on broadband, no matter how well-intentioned, is a path fraught with substantial costs and unintended consequences. Bright House provides a variety of services on an integrated and coordinated basis using a single high-capacity network. Imposing new regulatory requirements on broadband service will inevitably interfere with, and complicate, the already daunting task of optimizing the performance of multiple services – all of which consumers demand and use – on a single, integrated network.

In light of these considerations, if the Commission nevertheless concludes that it must impose new regulations, those regulations must be focused on the best-efforts Internet ***service*** that is now of regulatory concern, framed in a manner that does not inadvertently spill over to

reach providers' integrated high-capacity ***networks*** as a whole. Moreover, drawing regulatory distinctions among the particular technologies used to provide broadband capabilities – fiber, copper, coax, fixed wireless, mobile wireless – is entirely artificial. Any new regulatory regime for best-efforts broadband must apply to all providers of that service, completely irrespective of the technical platform or platforms a provider might use. Any other approach would be unfair to the unlucky providers who turn out to be subject to the new regulations, and would create an environment in which regulatory gaming and arbitrage, rather than the ability to deliver high-quality service to consumers, would determine marketplace success.

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Bright House Networks, LLC ("Bright House") submits these comments in response to the Notice of Inquiry issued by the Commission in the above-captioned proceeding.[1] Bright House is the country's sixth largest cable multiple system operator, and a full-service communications provider in Florida, Alabama, California, Indiana, and Michigan. Bright House serves approximately 2.4 million customers nationwide. In each of its operating divisions, Bright House offers advanced digital video, high speed data, facilities-based competitive voice services and high-capacity business class services.

I. THERE IS NO NEED FOR RECLASSIFICATION OR ADDITIONAL REGULATION.

A. Market Demand And Competition Have Produced Pro-Consumer Behavior By Broadband Internet Providers.

In the *Notice*, the Commission proposes to extend Title II common carrier regulation to broadband Internet services, but to simultaneously forbear, under Section 10 of the Act, from many of those same Title II requirements. Bright House is in full agreement with the Commission that the public interest, and the nation's interest, are served by protecting consumer choice and promoting sustainable, facilities-based competition for broadband Internet services. However, from Bright House's perspective as a broadband Internet provider facing competition

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[1] *Framework for Broadband Internet Service*, Notice of Inquiry, GN Docket No. 10-127, FCC 10-114 (June 17, 2010) ("*Notice*").

from wireline and fixed and mobile wireless rivals, the proposal to impose new regulations is unnecessary.

With only the rarest of exceptions, in the eight years since the Commission has formally treated broadband as unregulated,[2] providers have consistently acted in a manner that is beneficial for consumers. The consistent pro-consumer behavior did not arise from the presence of any residual Commission oversight after deregulation. Broadband Internet providers like Bright House act in ways that benefit consumers because they are subject to intense competition. Cable-delivered broadband competes with broadband delivered by telephone companies and with rapidly growing mobile and fixed wireless broadband services. Moreover, all participants in the industry recognize the enormous opportunities presented by seemingly insatiable consumer demand for new and interesting applications, location independence, and ever-increasing amounts of bandwidth. It is these market forces – consumer demand and competition – that drive provider behavior in this industry, and it is these market forces – not formal or informal oversight by the Commission – that ensure that providers treat consumers well.

As a result, there is no need for the Commission to re-assert or re-establish the authority it thought it had over broadband, but learned in *Comcast* that it did not.[3] In fact, the proposed reclassification of broadband from Title I to Title II is a cumbersome and potentially highly problematic regulatory solution in search of a problem that is simply not present in the marketplace. As a result, the Commission should not pursue the suggestions in the Notice.

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2 *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities,* Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd. 4798, ¶ 38 (2002) ("*Cable Modem Declaratory Order*"), *aff'd, NCTA v. Brand X,* 545 U.S. 967 (2005). Even prior to formally declaring cable-delivered broadband to be unregulated, the Commission had not made any effort to regulate this service.

3 *Comcast Corp. v. FCC,* 600 F.3d 642 (D.C. Cir 2010).

Trying to impose Title II regulation on broadband is trying to push the proverbial square peg into a round hole.[4]

At least since the Commission's *Computer II* decision in 1980, the Commission has recognized that, as a matter of policy, services involving the retrieval, storage, and processing of information are not appropriate subjects for "common carrier" regulation under Title II.[5] Broadband Internet access is, quintessentially, about the retrieval, storage, and processing of information, as the Commission properly recognized when it declared broadband to be an information service in 2002. At that time the Commission found that "cable modem service, an Internet access service, is an information service" because it supports such integrated functions as "e-mail, newsgroups, maintenance of user's World Wide Web presence, and the DNS," regardless of whether a user actually uses all of these functions as part of the access service.[6] Indeed, putting aside the more complex services increasingly available online, Bright House submits that the two prototypical functions of Internet access – web browsing and email – are inherently information services because they entail the service provider storing data, retrieving it, and/or enabling users to interact with it, in response to commands from users – information service functions, not common carrier function.

Nothing has changed since *Computer II* – and certainly nothing has changed from the *Cable Modem Declaratory Ruling* – that would warrant revisiting the policy determination that

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4 Bright House concurs in, and supports, the comments being filed by NCTA in this matter, explaining why the Commission may not and should not extend Title II regulation to any aspect of broadband Internet service, and why, if it does so, it should move with extreme caution, including phasing in the application of various portions of Title II. These comments address certain issues of particular concern to Bright House.

5 *Amendment of Section 64.702 of the Comm'n's Rules & Regs, Second Computer Inquiry,* Final Decision, 77 F.C.C. 2d 384 (1980), *aff'd sub nom. Computer & Commc'ns Indus. Ass'n v. FCC,* 693 F.2d 198 (D.C. Cir. 1982).

6 *Cable Modem Declaratory Order* at ¶ 38.

information services should not be subjected to Title II regulation. In fact, continuing developments since the 2002 *Cable Modem Declaratory Ruling* have only confirmed that regulation is inappropriate, as the information services consumers have received have only grown more numerous and sophisticated, while the network security and management functions necessary to deliver the multiple, simultaneous services consumers demand have become more complex as well.[7]

Congress recognized the logic and wisdom of treating information services in general, and Internet services in particular, as unregulated in Section 230 of the Communications Act, where it declared that the policy of the United States was "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[8] In light of that Congressional policy, and in light of the consistently pro-consumer behavior of the broadband Internet industry in the nearly fifteen years since that policy was declared, we submit that the effort suggested in the Notice to festoon the industry with a complex web of regulation and attempted forbearance is simply misguided.

We are particularly concerned with the negative effects on innovation and investment that would be the inevitable result of declaring any part of the broadband Internet industry to be subject to Title II regulation. Today, and for the past decade and more, providers have made their decisions about when and how much to expand capacity, what services and functions to

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[7] As discussed below, as providers like Bright House continue to increase network capacity (in our case, by upgrading to DOCSIS 3.0) to accommodate burgeoning demand for additional applications, the challenge of network management has only become more complex.

[8] 47 U.S.C. § 230(b)(2). This statement was a recognition and approval of the application of the Commission's *Computer Inquiry* policy of treating these services as free from any form of common carrier regulation. *See Goodyear Atomic Corp. v. Miller,* 486 U.S. 174, 184 (1988) (Congress is presumed to be aware of existing law and regulation when it legislates in an area).

make available, how to protect our networks (and consumers) from malware of all sorts, and how to manage the capacity we have, entirely through the lens of what will be best received by, and best serve, consumers themselves. It is extremely difficult to see any practical benefit to adding a regulatory overlay to that already extremely dynamic and complicated process.

B. Innovation And Consumer Choice Increase In An Environment Free From Restrictive Rules And Micromanagement.

Broadband has been nurtured, funded and constantly upgraded over the years, not as a result of regulatory requirements, but precisely because the cable industry was ***released*** from restrictive rules and micromanagement, and allowed to respond to competitive market forces. Not very long ago, the cable industry labored under intricate regulations nominally intended to protect consumers, but which actually constrained innovation and reduced consumer choices.[9]

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[9] In 1994, the Commission acknowledged that rate regulation can suppress investment when it relaxed its rules in order to "facilitate the development of new services" and to provide "marketplace incentives to expand the services" offered on regulated tiers. *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, Second Order on Reconsideration, Fourth Report and Order, and Fifth NPRM, 9 FCC Rcd. 4119 (1994) at ¶ 22. *See also id.* at ¶ 40 (new, more flexible methodology "provides appropriate incentives for operators to provide additional, high quality programming."). Bright House's experience under rate regulation illustrates how regulation can have negative, unintended consequences. Prior to regulation, Bright House's predecessor had offered a basic cable service in certain markets for only $1.00 per month. However, the basic cable service tier could not continue to be offered at $1.00/month, consistent with the then-new rules governing rates (which effectively established per-channel rate benchmarks and inflexibly allocated costs for recovery from specific tiers). The unintended result of rate regulation, in this case, was a significant increase in the rates for basic tier service.

As those rules were liberalized, then sunset,[10] network investment, plant upgrades, and programming diversity all skyrocketed.[11]

As the cable industry began to bring broadband speeds to Internet access and VoIP competition to incumbent LECs, the Commission helped nurture the new services by releasing the industry from legacy franchise, carrier, cable, and telephony regulation.[12] Broadband investment, penetration, reach and competitive voice offerings soared.[13]

The cable industry clearly led the way in offering broadband Internet access. By no means, however has it had the broadband market to itself. The investments and improvements made by the cable industry spurred ILECs to bring DSL out of hiding. Indeed, in Bright House's Tampa market, we have faced intense facilities-based competition from Verizon's FiOS service for almost 5 years. No regulation is needed to spur Verizon and Bright House in Tampa to invest and innovate, and no regulation is needed to supposedly "protect" consumers. The presence of

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10 *See id.*; *see also Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, Order and Notice of Proposed Rulemaking, 11 FCC Rcd. 5937, ¶¶ 49-50 (1996) (implementing the 1996 Act and sunsetting certain rate rules).

11 Available cable programming services quadrupled between 1995 and 2006. *See* NCTA, *History of Cable Television*, http://www.ncta.com/About/About/HistoryofCableTelevision.aspx. *See also Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, 24 FCC Rcd. 542, ¶ 21 (2009). The cable industry has invested over $161 billion since 1996 in infrastructure. *See Industry Data*, National Cable and Telecommunications Association, *available at* http://www.ncta.com/Statistics.aspx.

12 *See Cable Modem Declaratory Order; see also Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14853 (2005) ("*Wireline Broadband Order*"), *aff'd, Time Warner Telecom, Inc. v. FCC,* 507 F.3d 205 (3d Cir. 2007); *Vonage Holdings Corp.,* Memorandum Opinion and Order, 19 FCC Rcd. 22404 (2004), *aff'd sub nom. Minnesota Pub. Utils. Comm'n v. FCC,* 483 F.3d 570 (8th Cir. 2007).

13 By 2008, cable broadband was available to approximately 93 percent of U.S. households, up from just 46 percent in 2000, and the number of cable voice customers grew from just 1.5 million in 2001 to over 15 million in 2007. *2008 Industry Overview*, NCTA, http://i.ncta.com/ncta_com/PDFs/NCTA_Annual_Report_05.16.08.pdf.

large, well-funded, and technically sophisticated competition is all the motivation either of us needs to do the very best we can for consumers, day in and day out.

As our experience in Tampa and elsewhere shows, cable operators are in fierce competition with other providers of Internet access. The cable industry must continuously improve our product to meet competition from DSL, FiOS, and increasingly-popular fixed and mobile broadband wireless services. To keep meeting consumer expectations in this competitive marketplace, cable customer maximum data rates have been doubling every 21 months, and overall customer data usage continues to increase.[14] This creates a virtuous cycle for the consumer in which customer expectations for the speed and other capabilities of the service keep rising, and competition forces providers to continue to meet those rising expectations. This steady improvement in the capabilities of Bright House's network and the services it offers will be radically accelerated in the year ahead, as Bright House deploys DOCSIS 3.0 throughout its network. This deployment will require new investment approaching $100 million over time, but is one that we make as a competitive necessity. If we do not keep improving our services in this way, we will eventually be left behind by other providers, who do.

The same competitive and market imperatives that keep Bright House and other providers investing to improve capacity and service offerings also work to ensure that providers do not interfere with consumers' ability to have access to, and create, often exhilarating services and applications from the "edge" of the Internet.[15] Any provider that failed to meet customers' continuously growing expectations to be able to access and use interesting services or

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[14] Paul Liao, *Cable network operating and planning considerations*, Cable Television Laboratories, Inc., Dec. 8, 2009 at 14, presented at the Commission's December 8, 2009 Open Internet Workshop in Washington, D.C.

[15] *See In the Matter of Preserving the Open Internet; Broadband Industry Practices,* Notice of Proposed Rulemaking, 24 FCC Rcd 13064 (2009) ("*Net Neutrality NPRM*") at ¶ 4.

applications would discover that customers will switch to another provider, be it the incumbent telephone company, a competing telephone or cable company, or a fixed or mobile wireless company. Because of these strong marketplace incentives, we submit that adding a complex regulatory gloss onto this industry will not, in any practical sense, provide meaningful benefits or protections to consumers that they do not have already.

II. IF THE COMMISSION IS INTENT ON REGULATING, IT MUST DO SO IN A CAREFUL, LIMITED WAY.

For the reasons described above, we urge the Commission to step back from the regulatory brink and abandon the proposal in the Notice to impose direct regulation on the Internet for the first time in more than thirty years. But if regulation is to be imposed, it is critically important that it be structured in a way that its effects do not spill over into, and interfere with, the complex and dynamic investment, business, and network management decisions that are part and parcel of providing consumers with broadband Internet access.

It is widely observed that network and communications technology is converging while the Communications Act, under which the Commission operates, is built around technology-specific "silos."[16] This reality is apparent to Bright House, which operates an integrated, converged high-capacity network that simultaneously provides video, voice, and high-speed data services. Simultaneously providing multiple services subject to varying applicable regulatory (and deregulatory) regimes while continuously delivering high-quality services to consumers is challenging. Imposing new regulations on a service being provided in this integrated fashion creates a serious danger that the new regulations – no matter how well-intentioned – will

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[16] *See, e.g., Notice* at ¶ 60 & n.171 (*citing* J. Nakahata, *Broadband Regulation at the Demise of the 1934 Act,* 12 COMMLAW CONSPECTUS 169 (2004)).

generate significant negative unintended consequences that degrade, rather than improve, consumers' options and experience.[17]

In order to minimize the chance that such unintended negative consequences will occur, the Commission must make a crucial distinction between carefully applying regulation to individual ***services***, as opposed to crafting regulatory language that interferes with the operation and management of the sophisticated multifunction ***networks*** that providers like Bright House construct, augment, maintain, and operate. Today, for example, Bright House uses the same multifunction network to provide cable service (regulated under Title VI), VoIP service (subject to various specific regulatory requirements) and broadband Internet service (unregulated). The fact that Bright House's cable ***service*** is subject to certain regulations under Title VI does not give the Commission or other regulators any sort of plenary authority over Bright House's ***network***, or over the decisions that Bright House makes to update the network's technology or increase or manage its capacity. Moreover, any effort by regulators to dictate or constrain how Bright House manages its network (as opposed to regulatory obligations applicable to specific services) would inevitably cause problems and would, in any event, likely be obsolete before the new requirements ever took effect.

The principle of applying regulation to services, rather than networks, must be preserved if the Commission takes the (unfortunate) step of imposing any sort of Title II regulation on broadband Internet service (however that service might be defined for purposes of the Commission's regulatory effort). For example, as noted above, Bright House is embarking on a major investment project to upgrade the overall capacity and capability of its network by implementing DOCSIS 3.0. This will have many important, beneficial effects. It will of course

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[17] *See* note 9, *supra* (rate regulation inadvertently made it impossible to offer a consumer-friendly $1.00/month basic cable service).

create a network that has more total available throughput. But it will also add a variety of complex tools and capabilities that will enable Bright House to provide new and higher quality services ***using*** the new bandwidth, including upstream channel bonding (to allow greater bandwidth for consumer-generated content), improved encryption capabilities (to protect consumers' information, and to give content owners the confidence to make their materials available), and the ability to perform more sophisticated and useful integration with ever-more-capable and complex home networks. The ongoing improvement and evolution of our network will also enable us to devise services to meet the special needs of schools, libraries, hospitals and other commercial customers. Meeting the needs of these so-called "anchor institutions" will produce positive spill-over effects as area residents benefit from improved access to those institutions, and as some of the network capabilities deployed to serve those institutions become available over time to smaller businesses and individual consumers.

Ultimately, our evolving network will allow us to provide any number of higher quality services to all potential customers at reasonable prices. But the process of managing the simultaneous provision of multiple new and existing services is extremely complicated. If the Commission chooses to impose new regulations on best-efforts broadband Internet access service, it is imperative that those new regulations be focused on that ***service,*** and not be framed in such a way as to interfere with the provision, management, and operation of the multifunction ***network*** we use to provide all of our services on an integrated basis. For example, even if Bright House's broadband internet service were to become subject to regulation, that regulation should not dictate in any way what portion of network capacity should or must be devoted to that service or any of the other services Bright House provides.

In this regard, Bright House will without a doubt continue offering a "best efforts" broadband Internet service, and will continue to face the competitive and market pressures discussed above to ensure that the bandwidth and functionality of that service meet consumer needs. However, no matter what regulations might be imposed, directly or indirectly, on best-efforts broadband, those regulations must not be allowed to bleed over into, and interfere with, the ability to provide any other services Bright House may choose to offer using its same network.[18] Any regulatory obligations associated with best-efforts broadband service, for example, must not be allowed to affect Bright House's provision of cable service over its network – even if it chooses, over time, to deliver its cable service in IP or other similar format. Similarly, even if broadband Internet service were to be subject to some sort of regulation, that must not be permitted to interfere with Bright House's ability to offer other services – including services that provide superior network management and quality-of-service capabilities to content providers – using the portion of its network capacity that is ***not*** used for best-efforts broadband.

In this regard, the Commission is quite correct to express concerns about how reclassification might affect "managed" or "specialized" services.[19] Without in any way denigrating the versatility and utility of the "best efforts" Internet, it is becoming increasingly

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[18] Bright House believes that insulating the remainder of its services from whatever Title II-type regulation might be imposed on its best-efforts broadband service is compelled by 47 U.S.C. § 153(44), which states that "A telecommunications carrier shall be treated as a common carrier under this Act ***only*** to the extent that it is engaged in providing telecommunications ***services***." (Emphasis added.) The emphasized language confirms not only that any Title II regulation that might apply to broadband service be focused on that service alone, but also that under the Communications Act, Title II regulation indeed applies, if at all, to particular ***services,*** not to physical networks or technologies.

[19] *Notice* at ¶ 108.

clear that there are any number of services – ranging from entertainment,[20] to heath care,[21] to business and finance,[22] to energy management,[23] to emergency response services[24] – for which "best efforts" is simply not good enough. These and other services require active effort on the part of network operators – including working cooperatively with content and "edge" service providers – to function properly and deliver real value to consumers.[25] These services will not be developed to their full potential, if at all, unless the regulatory environment is stable enough, and flexible enough, to allow service providers to experiment and to give investors the confidence needed to commit often substantial sums to new ideas.

In direct contradiction to the realities of service and network innovation, some groups have proposed that managed services be subject to advance review or approval by the Commission before they could even be launched.[26] It is hard to imagine a regulatory requirement that would be more destructive of invention, innovation, and experimentation. Such a regime would be directly contrary to Congress's directive to maintain the Internet as a "vibrant and competitive free market ... unfettered by Federal or State regulation." Indeed, the

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20 E.g., T. Spangler, AT&T Reverses Ban On Sling via 3G, Multichannel News, Feb. 8, 2010 (*http://www.multichannel.com/article/448036-AT_T_Reverses_Ban_On_Sling_via_3G.php*).

21 *Net Neutrality NPRM* at ¶ 149.

22 *Id.*

23 *See, e.g.*, Charter [Net Neutrality] Comments at 23-24; NCTA [Net Neutrality] Comments at 37-38; Bright House [Net Neutrality]Comments at 12; Comcast [Net Neutrality] Comments at 61; Verizon [Net Neutrality] Comments at 12, 44; Qwest [Net Neutrality] Comments at 22-27; TWC [Net Neutrality] Comments at 103.

24 *Id.*

25 R. Cheng, Verizon Opens Its Network to Skype Calling Service, Wall Street Journal, Feb. 16, 2010 (http://online.wsj.com/article/SB10001424052748704804204575069382953903508.html).

26 *See* suggestions in Google [Net Neutrality] Comments at 76-77; Free Press [Net Neutrality] Comments at 111-12; [Net Neutrality] Comments of Public Knowledge, et al. ("Public Interest Commenters") at 32.

Commission has long recognized that regulatory delays can and do deter innovation and investment among broadband providers, concluding that "these costs, inefficiencies, and delays are significant and substantially impede network development,"[27] and that by eliminating these barriers, it could promote "the growth and development of entirely new broadband platforms" and "the flexibility to respond more rapidly and effectively to new consumer demands."[28]

It bears emphasis that potential innovations in managed services are not in zero-sum competition for network resources with best efforts Internet service. Bright House has continuously improved its Internet service at the same time it has improved its video services, always trying to improve the consumer experience and to compete with rival providers. The reality of operating an integrated network is that continuous improvements in the overall capacity of, and the technical features and capabilities of, the network, result in continuous, parallel improvements to all of the services on offer. Any regulatory obligation the Commission imposes on best-efforts broadband must reflect this reality.

III. ANY REGULATION OF BROADBAND INTERNET SERVICE MUST BE TECHNOLOGY- AND PLATFORM-NEUTRAL.

As noted above, the Communications Act is built around technology-specific silos, while the reality in the marketplace is that all broadband networks are converged hybrids. For example, increasingly consumer networks in and around the home use WiFi or other wireless technology to connect individual devices to the consumer's broadband service. The next outbound "leg" of the service may use fiber, wireless spectrum, coax, or copper, but even a so-called "wireless" service is only "wireless" to the nearest antenna. At that point the service is

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27 *Wireline Broadband Order* at ¶ 71.

28 *Id.* at ¶ 79.

carried over a copper or fiber wired transmission path just like any other broadband service.[29] At the same time, traditional "wireline" broadband providers like cable operators are increasingly offering "wireless" connectivity – both in supporting home networks, but also in providing "public" WiFi connectivity to their customers as well.[30] And, of course, the two largest "wireless" providers are Verizon and AT&T – who happen to be the two largest landline service providers as well.[31]

In these circumstances, creating new regulatory distinctions among different providers based on what portion of their underlying network transmission is or is not wireless versus wired makes no sense. Such distinctions would serve no valid public purpose and would simply create opportunities for different providers to "game" the system. If, therefore, the Commission chooses to impose Title II or similar regulation on broadband Internet services, it must apply the same rules and requirements to ***all*** providers of such services, completely irrespective of the

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[29] And, as "wireless" providers re-use spectrum by creating smaller and smaller "cells" – including so-called pico-cells and femto-cells – the portion of their services that are meaningfully "wireless" rather than "wired" gets even smaller. "Wireless" service arrangements under which a consumer deploys a tiny "cell" in the home which then piggy-backs for connectivity on the consumer's separate, "wired" broadband connection further blurs any meaningful distinction among technology types in this industry.

[30] *See, e.g.*, "Free WiFi for Cablevision Subscribers? Yep", New York Times (July 14, 2010), *available at* http://pogue.blogs.nytimes.com/2009/05/01/free-wi-fi-for-cablevision-subscribers-yep/.

[31] The challenges Bright House and other "wireline" providers face when confronting rapidly increasing consumer demand for broadband are directly parallel to those facing traditional "wireless" networks confronting the same situation. We can either upgrade our existing fiber-coax network to deliver more bandwidth over the existing set of nodes, or we can reuse our current bandwidth more intensely by splitting the existing nodes and deploying additional smaller nodes. In a directly parallel fashion, a traditional wireless provider faced with capacity constraints can either obtain more spectrum for use with its existing set of cell sites, deploy more advanced technologies (such as upgrading from 3G to 4G) or it can reuse its existing spectrum more intensely by increasing cell site density in its network. So, putting aside the fact that there are few if any networks that are purely "wireless," from the perspective of managing a multipurpose network in the face of rising consumer demand, there is no meaningful distinction between the challenges faced by a prototypical "wired" cable network and a prototypical "wireless" CMRS network.

technology used by any particular provider. Aside from adding needlessly to regulatory complexity, it makes no policy sense, and would be highly unfair in the marketplace, to subject cable-based providers (hybrid fiber-coax) to one set of rules, copper-based providers (DSL) to another, other wired providers (*e.g.*, FiOS) to another, and fixed and mobile wireless providers (CMRS, WiFi, WiMax and LTE) to another. If there are legitimate consumer interests regarding broadband Internet service that need protection through regulation, those interests do not disappear if the consumer accesses the Internet using a wireless device and are not magnified if the consumer accesses the Internet using copper or fiber. Whatever the rules turn out to be, they should be applied uniformly and fairly to all providers, whatever access technology they might use.[32]

In this regard, in regulatory terms, the "handful of core [Title II] statutory provisions" under consideration – sections 201, 202, 208 and 254, as well as possibly 222 and 255[33] – are platform agnostic. To the extent that any of these provisions are to be applied to broadband Internet service, they can and should apply to wireless (whether fixed or mobile) and wireline platforms alike.

The *Notice,* however, seems to suggest that there are "technological, structural, consumer usage, and historical differences between mobile wireless and wireline/cable networks" that might justify imposing Title II obligations only on wireline broadband networks.[34] This

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[32] We submit, with due respect, that the Commission – and, indeed, any regulator – simply lacks the capacity to craft specific rules in this technically highly complex area that try to distinguish regulatory obligations based on the relative challenges of managing a shared DOCSIS 2.0 or 3.0 network, managing a fiber-based GPON network, or managing a spectrum-based network. At most, the Commission should state its regulations in terms of any consumer protection ***objectives*** (in that sense, akin to the Commission's original "Internet Principles"), not in terms of network-specific prohibited or mandated ***behaviors.***

[33] *Notice* at ¶ 68.

[34] *Notice* at ¶ 102 (quoting *Net Neutrality NPRM* ¶ 159).

suggestion, however, confuses the policy goals of protecting consumers and promoting competition – goals embodied in the statutes in question – with the details of how those goals might be accomplished in different technological settings. For narrowband voice services today, for example, landline services offered in analog format by incumbent carriers over twisted pair copper, and voice services offered over the most advanced 3G and 4G networks available, are both subject to Section 201's "just and reasonable" requirement and Section 202's nondiscrimination requirement. The vast differences in the technology used to deliver voice service in those two contexts may be relevant to the details of how Section 201 and 202 might be applied on a day-to-day basis, but those technological differences have no bearing at all on ***whether*** Section 201 and 202 apply in the first place. If Sections 201 and 202 are to be applied directly or indirectly to broadband, the same principle should govern. Even if the particular issues that arise in applying those sections to a nominally wireless broadband network are not identical to the particular issues that would arise in applying it to a wireline broadband network, there is no sound reason to conclude that the legal provisions themselves should apply only to wireline broadband.

This principle is particularly important in the area of network management and the steps providers must take to optimize their networks to offer the array of services that consumers demand. As noted above, Verizon Wireless has worked with Skype to optimize the delivery of Skype voice traffic over Verizon's network, and AT&T Wireless has worked with Sling Media to optimize the delivery of that provider's content to the iPhone. Bright House submits that it is perfectly appropriate for those network providers to have taken these steps to bring these innovative services to a broad base of new customers. By the same token, it is equally appropriate to permit Bright House and other wireline broadband providers to similarly optimize

their networks and business arrangements with other entities to be able to offer the new and high-quality services that consumers demand and that our competitors will be offering. On the other hand, if the Commission concludes that the protection of consumers and the competitive process requires subjecting wireline providers' network optimization decisions to some sort of regulatory oversight or review, those same concerns apply fully to wireless providers.

Indeed, just as the last decade has seen an accelerating trend of consumers "cutting the cord" and relying entirely on their wireless phones for their voice communications needs, it is clear that we are now at the beginning of the same cord-cutting trend in connection with consumers' broadband services.[35] There is no policy justification for ignoring this trend in determining how to apply the fundamental protections of Sections 201 and 202.

This same logic applies fully to the other key sections of Title II – sections 222, 254, and 255 – that the Commission is considering apply to wireline broadband. Section 222 is intended to protect consumer privacy by placing careful limits on what providers can do with consumers' data, and on ensuring that providers do not misuse data that they receive from other providers. That concern is entirely technology-neutral. Indeed, consumers would certainly be baffled, and likely deeply troubled, by a regime in which the protection accorded to their network usage and other sensitive information depended on whether they plugged an Ethernet cable or a wireless data card into their computers to access the Internet. Section 255 is intended to ensure that

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[35] According to the Commission's most recent report, wireless plans that allow for broadband Internet access have grown from just 2 percent to 18 percent of all residential connections over a period of only three years. *See* February 2010 FCC Broadband Report at 7. And, as of year-end 2009, roughly 24 percent of data card users rely entirely on that technology for home Internet use. Survey data indicates that these trends will only continue. Nielson Co., *Cord-Cutting Frontiers: Mobile Data Cards At Home*, Aug. 19, 2008, http://blog.nielsen.com/nielsenwire/online_mobile/cord-cutting-frontiers-mobile-data-cards-at-home/ (reporting that 59 percent of mobile data card users surveyed were "considering swapping their . . . wired internet service for exclusive data card use").

persons with disabilities have full access to modern communications services and technologies. Again, it would be at least baffling and more likely deeply troubling for the Commission to establish a regime that applied the protections of Section 255 only to wireline broadband technologies and platforms.

It would be particularly odd to exclude wireless broadband platforms and services from the reach of Section 254's universal service policies if Section 254 is extended to wireline broadband. According to the *Notice,* section 254 represents a "keystone of the National Broadband Plan" to reform universal service.[36] Wireless carriers are already receive substantial funding under the High Cost universal service program applicable to traditional voice service – a program which the National Broadband Plan recommends be replaced by a Connect America Fund, the eligibility criteria of which "should be company- and technology-agnostic," *i.e.*, available to wired, wireless, satellite-based, and other broadband providers.[37] Any extension of section 254 to broadband, therefore, must include both wireline and wireless networks.

CONCLUSION

For the reasons stated above, Bright House submits that the Commission should not pursue any effort to "reclassify" broadband services under Title II at all. If it does so, however, it should ensure that any regulations are narrowly cabined to the particular service of regulatory concern, and that those regulations do not spill over to interfere with the ability of providers like Bright House to improve their networks, to provide other services, and to make the complex business, economic, and investment decisions needed to successfully provide numerous services over a sophisticated multifunction network, all the while meeting growing consumer demand in a competitive environment. In this regard, there is no reason to treat different broadband providers

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36 *Notice* ¶ 78.

37 Connecting America: The National Broadband Plan, at 145.

differently based on the particular mix of wired or wireless technologies they might choose to use in providing their services.

Respectfully submitted,

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